REMARKS

Applicants note that the Schreiber reference was previously used to reject canceled claim 28 and is now used to reject claims 1 and 14 that had been allowed. Applicants object to this incremental prosecution which has unduly drawn out the length of prosecution and resulted in additional expense.

Applicants respectfully traverse the rejection of claims 1 and 14 under 35 U.S.C. §103(a) as being unpatentable over Schreiber. Claims 1 and 14 recite features of an apparatus and method for providing streaming data from a server to multiple clients comprising a gateway located between the server and the clients. The rejection alleges that the Schreiber patent discloses all of the features recited in claims 1 and 14 with the exception of streaming data content as the information delivered via the gateways. Nevertheless, the Office Action contends that it would be obvious that the gateways of the Schreiber patent could be used to provide streaming data content.

Applicants respectfully submit that the Office Action does not provide any support for the contention of obviousness. Furthermore, other differences exist between the subject matter of claims 1 and 14 and the disclosure of the Schreiber patent, in addition to the nature of the information being provided through the gateways.

The three basic criterion for a *prima facie* case of obviousness are set forth in MPEP §2143. The first of these criteria is that "there must be some suggestion or motivation, either in the reference or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify

the reference or to combine reference teachings." With respect to this criterion, the MPEP goes on to state that "the teaching or suggestion to make the claim combination etc. be found in the prior art, not in Applicant's disclosure," citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The third criterion set forth in MPEP §2143 is that the "the prior art reference, or references when combined must teach or suggest all the claim limitations". It is respectfully submitted that the Office Action does not meet these requirements.

Claims 1 and 14 recite, among other elements, the features of "obtaining streaming data" and "providing streaming data" to client devices. An Internet search for a definition of "streaming data" was found at the www.eweek.com website, which defines "streaming data" as data that is structured and processed in a continuous flow, such as digital audio and video. The definition also has hyperlinks to "streaming audio" and "streaming video". The definition of "streaming audio" is a one way audio transmission over a data network. Streaming audio is widely used on the web as well as private intranets to deliver audio on demand or an audio broadcast (internet radio). Unlike sound files (WAV, MP3, etc.) that are played after they are downloaded, streaming audio is played within a few seconds of requesting it and the data is not stored permanently in the computer. "Streaming video" has a similar definition in which it is a one way video transmission over a data network. Streaming video is widely used on the web as well private intranet to deliver video on demand or a video broadcast. Unlike movie files (MPG, AVI, etc.) that are played after they are downloaded, streaming video is played within a few seconds of requesting it, and the data is not stored permanently in the computer.

In contrast, Schreiber's system is directed to delivering electronic mail messages with attached files, such as WAV, MP3 or MPG files. (See, for example, first line of Abstract, column 1, lines 32-35, column 2, lines 11-14 and column 2, lines 52-53). The Office Action states that the "streaming data" feature recited in the claims is disclosed at column 5, lines 2-5 of Shreiber as a "message comprising attachments such as documents, spreadsheets, executable programs, voice, video, etc." and that the message may have more than one intended recipient. However, the definition of "e-mail" also obtained from the www.eweek.com website is "the transmission of text messages and optional file attachments over a network". The e-mail in Schreiber is sent to a simulated mailbox in the network mail server or host computer until it is examined and deleted. The mail program (e-mail client) in the client's computer queries the mail server every so many minutes and alerts if new mail has arrived.

Due to its nature, streaming data must be presented to the user in a continuous manner. The technique disclosed in the Schreiber patent would not accomplish this result. Checking a server every so often for the next segment of data would interrupt the presentation, and be unacceptable.

Another distinction between streaming data and e-mail attachments is that the streaming audio or video data is played very shortly after being downloaded, while attachments must opened and played, which is at a recipient's convenience and can be quite a while after receipt of the e-mail message.

As can be seen, the streaming data recited in the independent claims 1 and 14 and the data transmitted in Schreiber's system are substantially different and not

analogous. Nowhere in Schreiber's disclosure is it stated that streaming data could be attached to an e-mail message, or that streaming data is an option to be used in place of an e-mail message as disclosed.

Additionally, Schreiber does not disclose or suggest a gateway that includes a means for obtaining streaming data from said server upon receipt of a <u>first request for a stream from any of said clients</u> as recited in independent claims 1 and 14. Schreiber's Figure 1 illustrates an e-mail switch 100 that communicates with gateways 108 and subsequent intended recipients 110. The Office Action asserts that because there are arrows in and out of the gateway 108 that the clients 110 are capable of issuing a first request for streaming data from the server. However, the arrows in Schreiber apparently indicate that electronic messages may originate from each of the clients 110.

Additionally, a word search of Schreiber's patent reveals that the word "request" is only associated with the originator of the e-mail message. The originator of the e-mail message may request a positive confirmation that the e-mail was delivered, nothing else. Schreiber does not disclose or suggest a gateway having a means for obtaining streaming data from a server upon receipt of <u>a first request for a stream</u> from any of the clients.

The Office Action cites Figures 1, 2, 4 and 5 of Schreiber as disclosing or suggesting the claimed feature of a means responsive to second and subsequent clients requesting said stream for effectively duplicating said stream within the gateway to provide said stream to the second and subsequent clients from the gateway. Nowhere in the cited figures or the associated text of the disclosure is it

disclosed or suggested that the gateways as described by Schreiber effectively duplicate the stream in response to the second and subsequent client's request for this streaming data.

As a result, Schreiber fails to disclose or suggest the recited features in claims 1 and 14 of "obtaining streaming data from a server upon a receipt of a request for the stream from a client" and "a means responsive to second and subsequent clients requesting said stream for effectively duplicating said stream within the gateway to provide the stream to the second and subsequent clients from the gateway."

In the motivational statement, the Examiner admits that Schreiber did not explicitly mention that his data is streaming data, but goes on to state that a gateway is well known in the art at the time of the invention and that a gateway transfers information and converts it to a form compatible with the protocols used by the receiving network. Applicants do not dispute the function of a gateway, however, there is no need for Schreiber's gateway to convert the e-mail message or any attachments thereto into streaming data since his system stores and transfers e-mail without any reason for modification.

The Office Action further states that it would be obvious to one skilled in the art at the time of the invention to convert the e-mail message or attachments into streaming data as a matter of choice. If that was the case, the intended recipient 110 would have to sit in front of his or her computer waiting for receipt of the e-mail message so that he or she could view the attachment as it is streaming to their desktop, or in the case of a document being the attachment, it would be instantly opened on the recipient's desktop and, in which case, may be viewable by

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The motivation statement does not make it clear how one of ordinary skill would convert the attachments of the e-mails immediately into streaming data at the gateway for distribution to the clients. It is respectfully requested that the Examiner provide an indication as to how such a conversion would be accomplished.

Accordingly, it is respectfully submitted that Schreiber does not disclose or suggest using the gateways of his system to convert attachments into streaming data to be viewed instantaneously upon receipt of his e-mail messages as suggested in the motivation statement.
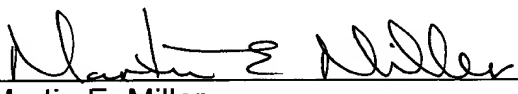
Therefore, a *prima facie* case of obviousness has not been made for the above reasons and the rejection of claims 1 and 14 is respectfully requested to be withdrawn.

In light of the above arguments, it is also respectfully requested that the initial indication of the allowance of claims 1 and 14 be reinstated and notification to that effect is solicited.

Respectfully submitted,

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